

REMARKS

This Amendment is responsive to the Office Action of March 7, 2006. In the application claims 1-16 are pending in each claim stands rejected under either 35 U.S.C. §102 or §103. Applicant has carefully reviewed the Office Action and the arguments presented therein and respectfully request reconsideration of the claims as amended in view of the remarks presented below. Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request reconsideration of the claims 1, 3-10, and 12 as amended in view of the remarks presented below.

Drawing Objections Under 37 C.F.R. § 1.83(a)

The Office Action objects to the drawings for failing to show the brewing chamber of claim 1. Applicant respectfully submits that at page 3, lines 19-20 of the specification, the Applicant incorporates by reference in its entirety the Lassota Patent No. 6,148,717 cited by the Office Action. Because the Office Action contends that the brewing chamber is disclosed in that patent (element 24), Applicant respectfully submits that the objections to the drawings is improper and request that the objection be withdrawn.

Claims Rejections Under 35 U.S.C. § 102

The Office Action rejected 1-7, 10-13, 15 and 16 as being anticipated by Lassota. In order to reject a claim under 35 U.S.C. § 102, "the identical invention must be shown in as complete detail as is contained in the claim." (MPEP § 2131.01). Thus, if any claim limitation is not found in the alleged anticipatory reference, there can be no invalidity under § 102.

Applicant has incorporated the limitations of claim 2 into claim 1, such that independent claim 1 now includes the limitation:

"wherein the pulse brew profiles extend indefinitely, and wherein each pulse brew operation concludes only upon a determination by the controller that a pre-determined volume of brewed beverage has been generated by the brewing operation."

The feature described therein is disclosed in the specification at page 11. The specification teaches that the apparatus of the present invention avoids calculating the number of cycles needed to complete the brewing operation, and avoids the risk of miscalculation or mis-entry of a time value by the user. The invention also provides more flexibility in the creation of brew profiles by not limiting the duration of a brew profile to an integer multiple of the total brew time. Thus, an optimum brew profile can be selected without any constraint as to the requirement that that profile be an integer multiple of the total brewing profile.

Conversely, Lassota teaches that the dispenser valve controller divides dispensing periods into a plurality of dispensing control periods for establishing a duty portion for at least some of the plurality of dispensing control periods, and then actuating the dispenser valve to pass the brewing liquid to the beverage ingredient holder only during the pre-selected duty portion of each of the plurality of dispensing control portions. (Lassota, col. 2, lines 58-65). This dividing of the control period to derive an integer multiple of dispensing control periods is what the aforementioned feature of the claimed invention is designed to avoid. (Lassota, col. 8, line 49). The patent discloses that the five minute

brew cycle can be divided up into fifteen second or twenty second periods. This results in either sixteen or twenty integer intervals that are dependent upon the division of these brew cycles into three a minute or four a minute cycles. Again, this departs from the present inventions directive to design a brew cycle independent of the overall brewing duration so that an optimum brew cycle can be selected. This cycle may be carried out repeatedly and the apparatus will turn off the machine when the appropriate amount of liquid has been brewed. Applicant respectfully contends that this advantage is neither taught nor suggested by the Lassota reference, and thus fails to meet the requirement of "identity of invention" as required in the MPEP.

Applicant notes that the Office Action does not even address this limitation in its 102 Rejection. The Office Actions rejection under 102 concludes that *"it should be noted that the operation of the device is dependent upon the maker and user of the device and fails to provide any structure to the claims."* (Office Action page 3). It is unclear if the Office Action is directing this language to the portion of claim 1 described above, however, the Applicant respectfully submits that the physical memory limitation includes a plurality of pulse brew profiles and the claim as amended extends these profiles indefinitely. Lassota brew profiles as taught by the reference itself are between sixteen and twenty intervals long and thus cannot meet the anticipatory limitation of claim 1.

The limitation in amended claim 1 clearly distinguishes over the cited art of record and renders the claims depending therefrom patentable. Notwithstanding the foregoing,

claim 4 includes the limitation wherein at least one of said pulse brew profiles includes a first portion defining repeating cycles, and where said controller is operative in response to said first portion to open and close said flow control valve for a predetermined period, and said controller is operative in response to a second portion to open the flow control valve until a pre-selected volume is reached. This limitation is a physical feature of the profile and the controller which is neither taught nor suggested by the Lassota reference. Again, the failure of the Lassota reference to teach this physical feature of the apparatus anywhere in its disclosure precludes anticipation under 35 U.S. C § 102.

Claims 5 and 6 are similarly allowable for the reasons discussed above. In claim 10, the memory and controller combination opens and closes the flow control valve according to a set of instructions which are neither taught nor suggested by the Lassota reference. Because the claimed features are physical characteristics of the memory and controller, it is not a mere use that is being described. For example the Lassota reference cannot be used to perform or achieve the claimed invention of claim 10. Accordingly, there is not identity of invention as required by MPEP Section 2131.01 and thus the rejection is improper.

Claim 12 also includes the limitation wherein the method of brewing beverages includes a stored plurality of intermittent flow profiles in a memory accessible by a controller where "said stored intermittent flow profiles extend[ing] indefinitely without a predetermined finish." This feature is described above is neither taught nor suggested by

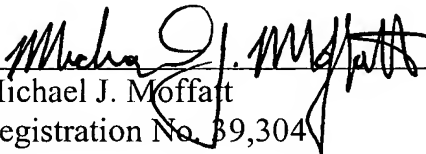
the Lassota reference and is thus not anticipated as asserted by the Office Action. Moreover, as described above, the benefits of having an open ended brewing profile allows flexibility that is not encountered in the prior art. Accordingly, Applicant respectfully submits that the pending claims as amended are allowable over the prior art.

It is respectfully submitted that the claims as amended are patentably distinct over the art of record. If the examiner believes that a telephone interview will further the prosecution of this case, he is invited to contact the undersigned at the number below.

If any additional fees are due, please charge our Deposit Account No. 21-0800.

Respectfully submitted,

FULWIDER PATTON LLP

By: 
Michael J. Moffatt
Registration No. 39,304

MJM:spc
200 Oceangate, Suite 1550
Long Beach, CA 90802
Telephone: (562) 432-0453
Facsimile: (562) 435-6014
Customer No. 27629